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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,512	10/17/2003	Craig M. Tingley	350601-1010	1998

7590

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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/688,512	TINGLEY, CRAIG M.	
	Examiner	Art Unit	
	Josiah Cocks	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on response filed 7/18/05.

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-46 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-46 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date <u>10/17/2003</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 7/18/2005 is acknowledged.

Election/Restrictions

2. Applicant's election without traverse of the invention of Group I (claims 1-46) in the reply filed on 7/18/2005 is acknowledged. Applicant has cancelled claim 47 that corresponded to the invention of Group II.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 7, 8-12, 14-17, 20-22, 24-26, 28-34, 37-39, 41-43, 45, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,358,474 to Liesse ("Liesse").

Liesse discloses in the Figure the invention as described in applicant's claims 1, 2, 4, 5, 7, 8-12, 14-17, 20-22, 24-26, 28-34, 37-39, 41-43, 45, and 46. In particular, Liesse shows a modular multiple-mode gas fueled assembly that includes a base grate (5), and a holder that includes a hollow distribution frame with an inlet port and a plurality of columns (e.g. items 11

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and 21) with outlet ports (see top portion of the Figure). Surrounding each of the columns are imitation candle bodies (10) which may be considered to be the support plates with a central aperture as recited or alternatively are considered the imitation candle bodies and must necessarily be supported at the respective bases by a support such as a plate with a central aperture to allow access of columns/burner tubes. Liesse shows a coupler (6) to a gas supply and appears to show that the inner diameter of inlet port to the distribution frame is larger than the inner diameter of each column (see top portion of Figure) and a distribution plate (12) proximate the outlet port. Liesse also shows an electromagnetic/solenoid valve with a control circuit and flame sensors that function as described in applicant's claims (see at least cols. 2 and 3).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 8, 18, 35, and 36 rejected under 35 U.S.C. 103(a) as being unpatentable over Liesse as applied to the claims 1, 7, 16, and 34 above.

In regard to claims 6 and 18 it has been held that to support a conclusion that a claim is directed to obvious subject matter, prior art references must suggest expressly or impliedly the claimed invention or an Examiner must present a "convincing line of reasoning" as to why one of ordinary skill in the art would have found the claimed invention to have been obvious. *Ex*

parte Clapp, 227 USPQ 972, 973 (Bd.Pat.App.&Int. 1985). In doing so, the Examiner may rely on “logic or scientific principle.” *In re Soli*, 317 F.2d 941, 947, 137 USPQ 797, 801 (CCPA 1963). See also MPEP § 2144.02.

In the present case, Liesse discloses that the distribution frame is attached the base grate but does not expressly disclose compression fasteners. However, at the time the invention was made, it would have been merely an obvious matter of design choice to a person of ordinary skill in the art to modify Liesse to include compression fasteners because Applicant has not disclosed that the use of these known fasteners provides an advantage, is used for a particular purpose, or solves a stated problem. Furthermore, one of ordinary skill in the art would have expected Applicant’s invention to perform equally well with the fastening mechanism taught in Liesse. Therefore, it would have been an obvious matter of design choice to modify Liesse to obtain the invention specified in claims 6 and 18.

In regard to claims 8, 35, and 36, Liesse clearly shows that the distribution plates (12) include an opening suitable to produce a flame (1-4). To have included multiple openings for each distribution plate would be simply a matter of duplicating the openings shown in Liesse and is not considered to be patentably distinct. See MPEP § 2144.05(VI)(B).

7. Claims 13, 23, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liesse as applied to claims 12, 20, and 39 above and further in view of U.S. Patent to 2,360,166 to Schumann et al. (“Schumann”).

Liesse discloses all the limitations of claims 13, 23, and 40 except possibly for a override-to-light switch.

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Schumann teaches a combustion apparatus considered to be in the same field of endeavor as Liesse. In Schumann, the combustion apparatus includes a photo sensor to determine the presence of flame and a control unit that controls a solenoid valve based on a signals from the sensor. As is well understood in the art, such devices include a override switch (26) to control the valve regardless of the sensor signals (see col. 2, lines 5-8).

Therefore, in regard to claims 13, 23, and 40, it would have been obvious to a person of ordinary skill in the art to modify Liesse to incorporate the override switch of Schumann to desirably temporarily override the effect of the sensor in controlling the valve and flame produced (see Schumann, col. 2, lines 5-8).

8. Claims 19, 27, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liesse as applied to claims 16, 25, and 42 above and further in view of U.S. Patent No. 5,450,841 to Whitaker et al. ("Whitaker").

Liesse discloses all the limitations of claims 19, 27, and 44 except for imitation logs arranged to rest on the holder.

Whitaker teaches a gas fireplace in the same field of endeavor as Liesse. In Whitaker, a holder includes an imitation log (12).

Therefore, in regard to claims 19, 27, and 44, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Liesse to incorporate an imitation log to desirably give the appearance of a fireplace having a natural wood burning log (see Whitaker, col. 2, lines 29-34).

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9. Alternatively, claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 354,380 to Bourne ("Bourne") in view of U.S. Patent No. 3,358,474 to Liesse ("Liesse").

Bourne discloses in Figures 1-4 a gas-fueled assembly similar to that described in applicant's claims 1-3. In particular, Bourne shows a base grate (see Figs. 1 and 2), and a holder having hollow distribution frame with an inlet (at E) and columns (I) each with an outlet (see Fig. 3). The inner diameter of each column is smaller than the inner diameter of the inlet port (see Fig. 3) and the columns are shaped in the manner described in applicant's claim 3.

Bourne does not disclose a plurality of support plates.

Liesse teaches a gas-fueled assembly in the same field of endeavor as Bourne. In Liesse, the assembly includes a plurality of outlet tubes that each include a support plate in the form of a imitation candle (10). The imitation candle itself may be considered to be the support plates with a central aperture as recited or alternatively are considered the imitation candle bodies and must necessarily be supported at the respective bases by a support such as a plate with a central aperture to allow access of columns/burner tubes

Therefore, in regard to claims 1-3, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Bourne to incorporate the support plates of Liesse, as such plates either function as imitation candles to give the appearance of a natural candle assembly or necessarily support the imitation candles (see Liesse, col. 1, lines 56-62).

Conclusion

10. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR

1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents to Richardson, Wright et al., and Shimek et al. ('485 and 743), and WO 86/04664 are included to further show the state of the art concerning gas-fueled assemblies with grates.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter, can be reached at (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
August 5, 2005



JOSIAH COCKS
PRIMARY EXAMINER
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